

(July 14, 1987)

H.C.R. 7

H.C.R. 43

H.C.R. 52

H.C.R. 57

H.C.R. 62

TENTH DAY

(Friday, July 17, 1987)

The Senate met at 11:00 a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Absent-excused: Leedom, Lyon, Montford, Sims.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Almighty God, we come to Thee knowing we have different views and needs, but in unison we give thanks for the night's rest and the opportunities this day will bring.

Make us faithful in the discharge of all our duties and enable us to spend the day so that the lives of others will be helped and enriched by our friendship.

May the work of the Senate be blessed and favored this day.

In Your name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Lyon was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Leedom was granted leave of absence for today on account of important business on motion of Senator Henderson.

Senator Montford was granted leave of absence for today on account of important business on motion of Senator Henderson.

Senator Sims was granted leave of absence for today on account of important business on motion of Senator Blake.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

S.C.R. 17

S.B. 18
H.B. 44
H.C.R. 11
H.C.R. 17
H.C.R. 19
H.C.R. 48
H.C.R. 49
H.C.R. 61

CO-AUTHOR OF SENATE BILL 100

On motion of Senator Sims and by unanimous consent, Senator Sarpalius will be shown as Co-author of S.B. 100.

CO-SPONSOR OF HOUSE JOINT RESOLUTION 5

On motion of Senator Edwards and by unanimous consent, Senator Krier will be shown as Co-sponsor of H.J.R. 5.

REPORTS OF STANDING COMMITTEES

Senator Parker submitted the following report for the Committee on Education:

S.B. 63
S.B. 81 (Amended)
S.B. 82 (Amended)

Senator Caperton submitted the following report for the Committee on Jurisprudence:

S.B. 76

MESSAGE FROM THE HOUSE

House Chamber
July 17, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 72, In memory of Mrs. Eula Brock Seawright.

S.B. 27, Relating to the transaction of business by, and the custody and loan of certain assets of, the Employees Retirement System of Texas. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

GUEST PRESENTED

The President introduced his guest, the Honorable Michael Andrews, representing the 25th Congressional District.

Congressman Andrews was welcomed and briefly addressed the Senate.

SENATE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution were introduced, read first time and referred to the Committee indicated:

S.B. 100 by Sims, Sarpalius Natural Resources
 Relating to the creation, duties, and powers of the Texas Agricultural Finance Authority and the development of and issuance of bonds for an agricultural financing program.

S.B. 101 by Zaffirini Intergovernmental Relations
 Relating to the process of optical data storage.

S.B. 102 by Sarpalius Intergovernmental Relations
 Relating to the creation, administration, powers, duties, operation, and financing of the Muleshoe Area Hospital District; granting the power of eminent domain; providing for the issuance of bonds and the levy of taxes.

S.C.R. 38 by McFarland Jurisprudence
 Granting Harold Muckleroy, Jr., and Thomas M. Dorsey, d/b/a Highway 80 Joint Venture permission to sue the State of Texas, the State Purchasing and General Services Commission and the Comptroller of Public Accounts.

SENATE RESOLUTION 89

Senator Brooks offered the following resolution:

S.R. 89, Recognizing the Sam Houston Memorial Association and commending the Association of Electric Cooperatives in Texas.

The resolution was read.

GUEST PRESENTED

Senator Brooks introduced Jim Morris, General Manager of the Texas Electric Cooperatives.

Mr. Morris, seated at the President's Rostrum, was presented a Texas flag by the President and an enrolled copy of **S.R. 89**, adopted by the Senate on July 15, 1987.

The Senate expressed appreciation to Mr. Morris for his association's worthwhile project of flying Texas' flags in Tennessee at the Sam Houston Schoolhouse and Museum site.

PROCLAMATION FROM THE GOVERNOR

The President laid before the Senate the following Proclamation from the Governor:

PROCLAMATION BY THE

GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article III, Section 40 and Article IV, Section 8 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby submit the following matters for consideration by the Seventieth Texas Legislature in its Second Called Session:

- (1) legislation relating to state support for a consortium of semiconductor companies engaged in semiconductor research;
- (2) legislation relating to the duties of cities to pick up employees' contributions to the municipal pension system;
- (3) legislation relating to the payment of wages by employers doing business in the state;

(4) legislation relating to the punishment for the offense of driving while intoxicated;

(5) legislation relating to reductions in premium rates for comprehensive coverage of automobiles protected by anti-theft security systems;

(6) legislation relating to the confinement of persons who are arrested in a county but are taken before a magistrate in another county;

(7) legislation relating to the definition of "intoxication" in workers compensation cases;

(8) legislation relating to the division and disposition of marital property and to spousal liability;

(9) legislation relating to actions under Titles 1 and 2, Family Code, including an action for child support or possession of and access to a child and to the offense of criminal nonsupport;

(10) legislation relating to adoption of the Revised Uniform Reciprocal Enforcement of Support Act;

(11) legislation relating to the enforcement and collection of state taxes;

(12) legislation relating to reports to the Texas State Board of Medical Examiners;

(13) legislation relating to the definition of blood banks for the purpose of testing, confidentiality of records, "Operation Look-Back" procedures, and liability;

(14) legislation relating to allowing as a condition of probation a contribution to Crime Stoppers;

(15) legislation relating to the videotaped testimony of a child who is an alleged victim of an offense involving sexual abuse;

(16) legislation relating to the criminal jurisdiction of statutory county courts;

(17) legislation relating to the authorization, issuance, examination, approval, registration, and recording of certain bonds and other obligations by public entities;

(18) legislation relating to the creation of an agricultural diversification program; and

(19) legislation relating to the creation, duties and powers of the Texas Agricultural Finance Authority, and the development of and issuance of bonds for an agricultural financing program.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 15th day of July, 1987.

/s/W. P. Clements, Jr.
William P. Clements, Jr.
Governor of Texas

ATTEST:

/s/Jack M. Rains
Jack M. Rains
Secretary of State

The Proclamation was read and was filed with the Secretary of the Senate.

SENATE BILL 53 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 53, Relating to the enforcement of certain orders, including an order for child support and for possession of and access to a child, and to the offense of criminal nonsupport.

The bill was read second time.

(Senator Parmer in Chair)

Senator Farabee offered the following amendment to the bill:

Amend **S.B. 53** by striking everything below the enacting clause and substituting the following:

SECTION 1. Sections 3.58(d) and (f), Family Code, are amended to read as follows:

(d) A temporary restraining order or a temporary injunction issued under this section may be granted without the necessity of an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held. The court may dispense with the issuance of a bond in connection with temporary orders for the protection of the parties and their property. A temporary restraining order or temporary injunction granted under this section need not:

- (1) define the injury or state why it is irreparable; [or]
- (2) state why the order was granted without notice; or
- (3) include an order setting the cause for trial on the merits with respect to the ultimate relief sought.

(f) The violation of any temporary restraining order, temporary injunction, or other temporary order issued under this section is punishable as contempt.

SECTION 2. Section 11.11, Family Code, is amended by amending Subsection (d) and adding Subsection (h) to read as follows:

(d) In a suit under this subtitle the court may dispense with the necessity of:

- (1) a bond in connection with temporary orders in behalf of the child; and
- (2) setting the cause for trial on the merits with respect to the ultimate relief sought.

(h) The violation of any temporary restraining order, temporary injunction, or other temporary order issued under this section is punishable by contempt. When enforcement of an order is sought by a motion for contempt, the respondent shall be personally served with notice directing the respondent to appear for a hearing at a designated time and place. If the respondent fails to appear for the hearing at the time and place designated, the movant's attorney may request the issuance of a capias for the arrest of the respondent. If the court grants the request, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. It shall be rebuttably presumed that an appearance bond or security in the amount of \$1,000, or a cash bond in the amount of \$250, is reasonable. The capias shall be treated by law enforcement officials in the same manner as a misdemeanor arrest warrant for a criminal offense, including entry in a local police or sheriff's computer record of outstanding warrants, but shall not be entered in a state or federal computer record of outstanding warrants. If the respondent is taken into custody and released on bond, the bond shall be conditioned on the respondent's promise to appear in court for a hearing on the merits as required by the court without the necessity of further personal service of

notice on the respondent by an officer. If the respondent is taken into custody and not released on bond, the respondent shall be taken before the court that issued the capias on or before the first working day after the arrest for a release hearing to determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established. If the court makes this determination, the court may set a hearing on the alleged contempt for a designated time and place without the necessity of further notice to the respondent. If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than five days after the day that the respondent was taken into custody unless the accelerated hearing is waived by the respondent and by the attorney as provided by Section 14.32(f) of this code. If a cash bond has been posted and the respondent appears at the hearing as directed, and if the respondent is found to be in contempt for failure to pay child support as ordered, the court shall order the respondent to execute an assignment of the cash bond to the child support obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. If the respondent fails to appear at the hearing as directed and the appearance bond or security has been forfeited, and if the respondent has been found to be in contempt for failure to pay child support as ordered, the proceeds of any judgment on the bond or security shall be paid to the obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. The obligee may bring suit on the bond in his own right.

SECTION 3. Section 14.03(b), Family Code, is amended to read as follows:

(b) The court by local rule shall ~~may~~ establish and publish schedules, guidelines, and formulas for use in determining the times and conditions for possession of and access to a child.

SECTION 4. Section 14.05, Family Code, is amended by amending Subsection (a) and by adding Subsections (g) and (h) to read as follows:

(a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he or she is 18 years of age in the manner and to the persons specified by the court in the decree. The court of continuing exclusive jurisdiction may modify an existing order or enter a new order extending child support past the 18th birthday of the child, whether the request for such an order is filed before or after the child's 18th birthday[; provided that], if the child is fully enrolled in an accredited [primary or] secondary school in a program leading toward a high school diploma. The[; the] order for periodic support [of that child] may provide that payments continue until the end of the school year in which the child graduates. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree. [After reviewing the recommendations of the Texas Commission on Child Support, the Supreme Court of Texas shall by rule adopt guidelines to compute an equitable amount of child support to guide the courts in determining the amount of child support:] In determining the amount of child support, the court shall consider all appropriate factors, including but not limited to the guidelines adopted by the supreme court, the needs of the child, the ability of the parents to contribute to the child's support, and any financial resources available for the support of the child.

(g) The amount of support ordered for the benefit of a child shall be determined without regard to whether the child was born in wedlock.

(h) The Supreme Court of Texas shall by rule adopt guidelines to compute an equitable amount of child support to guide the courts in determining the amount of child support. The supreme court shall appoint an advisory committee on child

support guidelines of 15 or more persons, composed of judges, lawyers, and laypersons, to assist it in the periodic review and updating, if necessary, of the child support guidelines.

SECTION 5. Section 14.31, Family Code, is amended by amending Subsections (b) and (c) and by adding Subsection (e) to read as follows:

(b) Pleading. (1) Contents of Motion. Motions under this subchapter shall be verified as to the truth of the facts alleged by the party seeking enforcement of the court order. The motion shall set out specifically and with particularity the provisions of the final order, decree, or judgment sought to be enforced and, in separate counts, the [time:] date, [and] place, and, if applicable, the time of each occasion upon which the respondent has not complied with the order, the manner of the noncompliance, and the relief sought by the movant. The movant or the movant's attorney shall sign the motion. If the movant pleads that there have been repeated past violations of the court order, the movant may plead that anticipated future violations of a similar nature may arise between the filing of the motion and the date of the hearing. If a respondent specially excepts to the pleadings or moves to strike, the court shall rule on the exceptions or the motion before it hears the motion to enforce. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

(2) Joinder of Claims and Remedies. A party seeking enforcement of a final court order under this subchapter may join in the same proceeding, either independently or alternately, as many claims and remedies as he has against another party, whether such claims arise under this chapter, other provisions of this subtitle, or other provisions or rules of law. Claims that may be joined include but are not limited to proceedings to:

- (A) enforce a child support order by contempt under Section 14.40 of this code;
- (B) reduce child support arrearages to judgment under Section 14.41 of this code;
- (C) require a person obligated to support a child to furnish bond or other security under Section 14.42 of this code;
- (D) require withholding from earnings under Section 14.43 or Subchapter C of this chapter;
- (E) enforce a right of possession of or [to possess and have] access to a child by contempt under Section 14.50 of this code;
- (F) require a person to furnish bond or other security to ensure compliance with a court order for possession of and access to a child under Section 14.51 of this code;
- (G) transfer the proceeding because venue is improper under Section 11.06 of this code;
- (H) petition for further action concerning a child under Section 11.07 of this code;
- (I) modify an existing order or decree under Section 14.08 of this code;
- (J) petition for a writ of habeas corpus under Section 14.10 of this code;
- (K) recover damages under Chapter 36 of this code;
- (L) initiate procedures for withholding child support from earnings without the necessity of further action by the court under Sections 14.44 and 14.45 of this code; and
- (M) recover under any reciprocal enforcement of support act or interstate income withholding act whether as rendering or responding state.

(c) Duty of Court on Filing of Motion. On the filing of a motion under this subchapter, the court shall order ~~[endorse thereon]~~ the time, place, and date of the hearing at which the respondent shall appear and respond to the motion. It is not necessary for the notice of hearing or show cause order to repeat the matters pleaded or prayed for in the motion for enforcement. The hearing shall be held no sooner than 10 a.m. of the Monday next after the expiration of 20 days from the date of service, except that if enforcement by contempt, income withholding, or both, are the only remedies [under Section 14.40 of this code is the only remedy] sought by the movant, the court may direct the respondent to appear on a date not sooner than 10 days from the date of service to show cause why the motion for enforcement should not be granted [he should not be adjudged in contempt].

(e) Notice and Capias. When enforcement of any permanent order entered under this subtitle is sought, notice of any motion, other than a motion for contempt, is sufficient if it is given to respondent as provided by the Texas Rules of Civil Procedure. When enforcement of an order is sought by a motion for contempt, the respondent shall be personally served with notice directing the respondent to appear for a hearing at a designated time and place. If the respondent fails to appear at the hearing at the time and place designated, the movant's attorney may request the issuance of a capias for the arrest of the respondent. If the court grants the request, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. It shall be rebuttably presumed that an appearance bond or security in the amount of \$1,000, or a cash bond in the amount of \$250, is reasonable. The capias shall be treated by law enforcement officials in the same manner as a misdemeanor arrest warrant for a criminal offense, including entry in a local police or sheriff's computer record of outstanding warrants, but shall not be entered in a state or federal computer record of outstanding warrants. If the respondent is taken into custody and released on bond, the bond shall be conditioned on the respondent's promise to appear in court for a hearing on the merits as required by the court without the necessity of further personal service of notice on the respondent by an officer. If the respondent is taken into custody and not released on bond, the respondent shall be taken before the court that issued the capias on or before the first working day after the arrest for a release hearing to determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established. If the court makes this determination, the court may set a hearing on the alleged contempt for a designated time and place without the necessity of further notice to the respondent. If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than five days after the day that the respondent was taken into custody unless the accelerated hearing is waived by the respondent and by the attorney as provided by Section 14.32(f) of this code. If a cash bond has been posted and the respondent appears at the hearing as directed, and if the respondent is found to be in contempt for failure to pay child support as ordered, the court shall order the respondent to execute an assignment of the cash bond to the child support obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. If the respondent fails to appear at the hearing as directed and the appearance bond or security has been forfeited, and if the respondent has been found to be in contempt for failure to pay child support as ordered, the proceeds of any judgment on the bond or security shall be paid to the obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. The obligee may bring suit on the bond in his own right.

SECTION 6. Section 14.32, Family Code, is amended by amending Subsection (a) and by adding Subsections (e) and (f) to read as follows:

(a) Evidence. The determination of the motion to enforce shall be made by the court on the basis of the pleadings and the evidence offered by the parties. ~~[All allegations of facts in the motion shall be taken as true unless specifically denied by the respondent in a verified denial.]~~

(e) Security for Appearance. If a respondent executes a bond or posts security after being served with a writ of attachment or other process, the bond or security shall be made payable to the obligee in the same manner as provided for in Sections 14.42 and 14.51 of this code.

(f) Appointment of Counsel. In any enforcement proceeding in which contempt of court or a finding of violation of a probation imposed in prior contempt proceedings is sought, the court shall first determine whether incarceration of the respondent is a possible result of the proceedings. If incarceration is possible, the court shall inform a respondent who is not represented by an attorney of his right to be represented and his right to the appointment of an attorney if he is indigent. If the respondent claims indigency and asks for appointment of an attorney, the court shall require him to file an affidavit and may call witnesses and hear any relevant testimony or other evidence to determine the question of indigency. If the court determines that the respondent is indigent, an attorney shall be appointed to represent him. If the respondent is not in custody, an appointed attorney is entitled to 10 days from the time of appointment to respond to the movant's pleadings and to prepare for the hearing; if the respondent is in custody, an appointed attorney is entitled to five days from the time the respondent was taken into custody to respond to the movant's pleadings and to prepare for the hearing. The time for preparation may be shortened or extended by a waiver in writing signed by the attorney and by the respondent. An appointed attorney shall restrict his legal representation of the respondent to the allegation of contempt or of violation of probation, and shall not participate in collateral issues joined in the same proceeding. If the court determines that the respondent will not be incarcerated as a result of the proceedings, the court may require a respondent who is indigent to proceed without an attorney.

SECTION 7. Section 14.33, Family Code, is amended to read as follows:

Sec. 14.33. ORDER OF COURT. (a) Contents. An enforcement order shall contain findings setting out specifically and with particularity or incorporating by reference the provisions of the final order, decree, or judgment for which enforcement was sought, and the time, date, and place of each and any occasion on which the respondent failed to comply with such provision, and setting out the relief awarded by the court.

(b) Attorney's Fees and Costs. The court may enter orders for attorney's fees and costs in any enforcement proceeding under this subchapter as provided in Section 11.18 of this code. An attorney appointed to represent an indigent respondent under Section 14.32(f) of this code is entitled to a reasonable fee in the amount set by the court. The fee shall be paid from the general funds of the county where the suit is heard according to the schedule in Article 26.05, Code of Criminal Procedure. For this purpose, a bona fide appeal to a court of appeals or proceedings on the merits in the Texas Supreme Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

(c) Obligor to Pay Attorney's Fees and Costs; Exception. If the court finds that an obligor has failed or refused to make child support payments that were past due and owing at the time of the filing of the enforcement proceeding, the court shall order the obligor to pay the movant's reasonable attorney's fees and all court costs in addition to any other amounts past due, unless the court makes a specific finding that the attorney's fees and costs need not be paid by the obligor and states the reasons supporting that finding.

(d) Obligor Not in Contempt; Other Remedies Not Precluded. A finding that an obligor is not in contempt does not preclude any other enforcement remedy

properly pled for, including rendition of a money judgment, posting of a bond or other security, or withholding income from earnings.

SECTION 8. Section 14.40, Family Code, is amended by adding Subsections (f), (g), and (h) to read as follows:

(f) Application of Bond Pending Writ. If the obligor seeks to execute a bond or to post security pending a hearing by an appellate court on any writ, the bond or security on forfeiture shall be payable to the obligee in the same manner provided for in Sections 14.42 and 14.51 of this code.

(g) Inability to Pay. It is an affirmative defense to an allegation of contempt of court or of the violation of a condition of probation requiring payment of court-ordered support that the obligor lacked the ability to provide support in the amount ordered, lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed, attempted unsuccessfully to borrow the needed funds, and knew of no source from which the money could have been borrowed or otherwise legally obtained.

(h) Affirmative Defense. The issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

SECTION 9. Section 14.43(d), Family Code, is amended to read as follows:

(d) Withholding for Arrearages. In addition to income withheld for the current support of a child, in appropriate circumstances and in accordance with the guidelines established for child support payments as provided in Subsection (a) of Section 14.05 of this code, the court shall enter an order that income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any child support arrearages. The additional amount to be withheld to be applied towards arrearages shall [should] be sufficient to fully discharge those arrearages in not more than two years or add 20 percent to the amount of the current monthly support order, whichever will result in the arrearages being fully discharged in the least amount of time [is less], consistent with the limitations on the maximum amount that may be withheld from earnings as provided by Subsection (f) of this section. If the court finds that such a repayment schedule would cause the obligor, the obligor's family, or [the] children for whom [the] support is due from the obligor to suffer unreasonable hardship, the court may extend the repayment period for a reasonable length of time.

SECTION 10. Section 14.44(d), Family Code, is amended to read as follows:

(d) Hearing on Contested Delinquency. When a motion [petition] to stay issuance and delivery has been filed, a hearing on the motion must be held within 30 days of its filing. The obligor and obligee, or their authorized representatives, must be notified by the clerk of court of the date, time, and place of the hearing. The court must decide the contested delinquency and either enter an order for income withholding pursuant to Section 14.43 of this code or deny the requested relief within 45 days of the date that the notice of delinquency was received by the obligor. If movant is pleading repeated violations of the court order, it is permissible to plead anticipated future violations of a similar nature that may arise between the filing of the motion or the notice of delinquency and the date of the hearing or the issuance of a writ of withholding from earnings for child support. Any defect in pleadings will be considered waived unless respondent specially excepts in writing and cites with particularity the alleged defect, obscurity, or other ambiguity in the motion for enforcement. Any such defensive pleading must be heard by the court before hearing the motion to stay issuance [enforce]. If any exceptions are sustained by the court, the movant shall be given an opportunity to replead and shall continue the hearing [continued] to a date certain without the requirement of additional service.

SECTION 11. Sections 14.45(a) and (c), Family Code, are amended to read as follows:

(a) Issuance and Delivery. No sooner than 20 days following the mailing of a notice of delinquency to the obligor by first class mail or 11 days after receipt of a notice of delinquency by the obligor by hand delivery or certified mail, if no ~~motion~~ petition to stay issuance of the writ has been filed the attorney general shall file a request with the clerk of court to issue a writ of income withholding. The writ shall be delivered by certified mail, return receipt requested, to the employer of the obligor to the person authorized to receive service of process in civil cases generally, or to a person designated by the employer to receive writs of withholding by written notice to the clerk of the appropriate court, or by the service of citation as provided by the Texas Rules of Civil Procedure. The writ shall be issued and mailed by the clerk not later than the second working day after the request is filed.

(c) Withholding for Arrearages. In addition to withholding for current child support, the writ of income withholding shall require an additional amount to be withheld to be applied towards the arrearage sufficient to fully discharge those arrears in not more than two years or add 20 percent of the amount of current monthly support order, whichever will result in the arrears being fully discharged in the least amount of time [is less]. However, if the attorney general finds that the obligor, the obligor's family, or the children for whom the support is due would suffer unreasonable hardship from such a schedule of repayment, the attorney general may request an extended repayment schedule to be instituted by the writ.

SECTION 12. Section 14.50, Family Code, is amended by amending Subsection (c) and by adding Subsection (e) to read as follows:

(c) Relinquishment of Possession of Child. An alleged contemnor may plead and prove that the movant voluntarily relinquished the actual care, control, and possession of the child for the time encompassed by court-ordered periods of possession of and access to the child alleged to have been interfered with. Such a relinquishment is an affirmative [a] defense in whole or part to a motion for contempt for failure to permit the movant to possess and to have access to the child according to the terms of a court order or for violation of a probation order imposed in a prior contempt proceeding.

(e) Affirmative Defense. The issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an alleged contemnor must prove the affirmative defense by a preponderance of the evidence.

SECTION 13. Section 25.05, Penal Code, is amended to read as follows:

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if he intentionally or knowingly fails to provide support ~~[that he can provide and that he was legally obligated to provide]~~ for his child ~~[children]~~ younger than 18 years of age, or for his child who is the subject of a court order requiring the individual to support the child [spouse who is in needy circumstances].

(b) ~~[Proof that the actor has contributed no support or insufficient support to his child, or to his spouse who is in needy circumstances, is prima facie evidence of a violation of this section:~~

~~[(c) For purposes of this section, "insufficient support" means support less than the support needed by a child or spouse to meet the minimal requirements of the child or spouse necessary for food, clothing, shelter, and medical care.~~

~~[(d)] For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged [admitted] by the actor or has been established in a civil suit under the Family Code or the law of another state.~~

~~[(e)] Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense [and a spouse shall be a competent witness].~~

(d) [(f)] It is an affirmative defense to prosecution under this section that the actor could not provide [the] support for his child [that he was legally obligated to provide].

(e) The [(g) ~~During the~~] pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code; ~~the court, after notice and a hearing, may enter temporary orders providing for support and enforce such orders by contempt proceedings~~.

(f) [(h)] Except as provided in Subsection (g) [(i)] of this section, an offense under this section is a Class A misdemeanor.

(g) [(i)] An offense under this section is a felony of the third degree if the actor:

- (1) has been convicted one or more times under this section; or
- (2) commits the offense while residing in another state.

SECTION 14. (a) This Act takes effect November 1, 1987.

(b) This Act applies only to an offense of criminal nonsupport committed on or after the effective date of this Act. For purposes of this section, an offense of criminal nonsupport is committed before the effective date of this Act if any element of the offense occurs before that date.

(c) An offense of criminal nonsupport committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 53 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 53 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed viva voce vote.

SENATE BILL 81 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 81, Relating to the amount and terms of, and fees payable in connection with, student loans from the Texas Opportunity Plan Fund.

The bill was read second time.

Senator Barrientos offered the following committee amendment to the bill:

Amend **S.B. 81**, page 3, by adding after line 6 “, and that this Act take effect and be in force from and after its passage, and is so enacted.”

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 81 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 81 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Leedom, Lyon, Montford, Sims.

GUEST PRESENTED

Upon recognition, Senator Krier introduced Dr. Katherine Rathbun of San Antonio.

Dr. Rathbun, again serving as Capitol Physician for the Day, was welcomed by the Senate and received an expression of appreciation for her service.

GUEST PRESENTED

Senator Armbrister was recognized and presented Miss Sherry Baker of San Antonio.

Miss Baker, winner of seven Gold Medals at the National Veterans Wheelchair Games, has been named to the U.S. Wheelchair Olympic Shooting team and will compete in the World Championships in September.

The Senate welcomed this special guest.

SENATE CONCURRENT RESOLUTION 11 ON SECOND READING

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.C.R. 11, Granting Artemio Alanis, Jr., permission to sue the State of Texas and The University of Texas System.

The resolution was read second time and was adopted viva voce vote.

COMMITTEE SUBSTITUTE SENATE CONCURRENT RESOLUTION 7 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

C.S.S.C.R. 7, Granting Mission Construction, Inc., permission to sue the State of Texas and the Texas Parks and Wildlife Department.

The resolution was read second time and was adopted viva voce vote.

**SENATE CONCURRENT RESOLUTION 1
ON SECOND READING**

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.C.R. 1, Granting Mott Construction Corporation permission to sue the State of Texas and Texas Southern University.

The resolution was read second time and was adopted viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
July 17, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 68, Expressing appreciation to individuals and organizations regarding the reinterment of Texas Confederate veterans who fought at the Battle of Glorieta.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE SENATE BILL 83
ON SECOND READING**

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 83, Relating to certain medical tests required of persons arrested for offenses involving sexual assault.

The bill was read second time.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 83** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 21, Code of Criminal Procedure, is amended by adding Article 21.31 to read as follows:

Art. 21.31. A person indicted for an offense under Section 22.011 or 22.021, Penal Code, shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense. If the person refuses to voluntarily submit to the procedure or test, the court may require the person to submit to the procedure or test. The person performing the procedure or test shall make the test results available to the court, and the court shall make the test results available to the victim of the alleged offense. The state may

not use the fact that a medical procedure or test was performed on a person under this subsection or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

SECTION 2. Section 9.02, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), as added by H.B. 1829, 70th Legislature, Regular Session, 1987, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) A person or entity may not require another person to undergo any medical procedure or test designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless required under Subsection (c) or (g) of this section or under Article 21.31, Code of Criminal Procedure, or unless the medical procedure or test is necessary:

(1) as a bona fide occupational qualification and there exists no less discriminatory means of satisfying the occupational qualification;

(2) to screen blood, blood products, bodily fluids, organs, or tissues for the purpose of determining suitability for donation;

(3) in relation to a particular person under this Act;

(4) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:

(A) the test result would change the medical or social management of the person tested or others who associate with that person; and

(B) the test is conducted in accordance with guidelines that have been adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation, and approved by the department; or

(5) to manage accidental exposure to blood or other bodily fluids but only if the test is conducted in accordance with written infectious disease control protocols adopted by the health care agency or facility and is conducted in accordance with Subsection (d) of this section[;

~~[(6) a patient may be required to be tested for AIDS, for HIV infection, for antibodies to HIV, or for any other probable causative agent of AIDS if a medical procedure is to be performed on the patient that could expose health care personnel to AIDS or HIV infection, according to Texas Board of Health guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, if there is sufficient time to receive the test result before the procedure is conducted].~~

(g) A patient may be required to be tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS if a medical procedure is to be performed on the patient that could expose health care personnel to AIDS or HIV infection, according to Texas Board of Health guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and if there is sufficient time to receive the test result before the procedure is conducted.

SECTION 3. Section 9.03(b), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), as added by H.B. 1829, 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) A test result may be released only to:

(1) the department under this Act;

(2) a local health authority if reporting is required under this Act;

(3) the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf; ~~and~~

(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS and the physician who ordered the test makes the notification. This subdivision does not provide a duty to notify the spouse, and a cause of action does not arise under this subdivision for the failure to make that notification; and

(8) if the person is tested as required by Article 21.31, Code of Criminal Procedure, the magistrate before whom the person tested was taken and the victim of an alleged offense listed in that subsection committed by the person tested.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Section 1 of Floor Amendment No. 1 to C.S.S.B. 83 to include the following:

Testing under this section shall be conducted in accordance with written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and the victims of the alleged offense.

The amendment was read and was adopted viva voce vote.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Section 1 of Floor Amendment No. 1 to C.S.S.B. 83 by deleting the words:

the court, and the court shall make the test results available to

and substitute the following language:

the local health authority and the local health authority shall be required to make the notification of the test result to

Amend Section 3 (8) by deleting the words:

the magistrate before whom the person tested was taken and

The amendment was read and was adopted viva voce vote.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to C.S.S.B. 83, Section 3, subsection (8) to add the following:

The court shall notify the victim of the alleged offense of the requirements of this Act under Section 9.03.

The amendment was read and was adopted viva voce vote.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 5

Amend Floor Amendment No. 1 to C.S.S.B. 83, Section 1, (c) by adding:

Nothing in this section would allow a court to release a test result to anyone other than those specifically authorized by this law and the provisions of Section 9.03, (c) (2) Communicable Disease Prevention and Control Act (Article 4419-1, Vernon's Texas Civil Statutes) shall not be construed to allow such disclosure.

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

(President in Chair)

**COMMITTEE SUBSTITUTE SENATE BILL 83
ON THIRD READING**

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 83 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Leedom, Lyon, Montford, Sims.

GUEST PRESENTED

Senator Blake was recognized and escorted Miss Jo Thompson to the President's Rostrum for introduction to the Senate.

Miss Thompson, competing as "Miss Greenville", was recently crowned "Miss Texas". Miss Thompson addressed the Senate, expressing her pleasure to represent Texas in the Miss America Pageant.

MESSAGE FROM THE HOUSE

House Chamber
July 17, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.J.R. 5, Proposing a constitutional amendment authorizing the legislature to expand the services provided by the Amarillo Hospital District to include certain

residents of Randall County and authorizing Randall County to provide financial assistance to the district. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 76 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 76, Relating to the definition of "intoxication" in workers' compensation cases.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 76 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 76** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Leedom, Lyon, Montford, Sims.

HOUSE BILL 105 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 105, Relating to the dissolution of the West Columbia-Damon Hospital District of Brazoria County, Texas.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 105 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 105** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed viva voce vote.

SENATE BILL 82 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 82, Relating to the appraisal of teachers and administrators for purposes of the career ladder.

The bill was read second time.

Senator Parker offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 82** by amending SECTION 2 by striking subsections (d) and (e), and amending subsection (c) in the following manner:

(c) Appraisal shall be done not fewer than:

(1) two times during each school year for probationary teachers and for teachers on level one of the career ladder; and

(2) once during each school year for teachers on levels two, three, and four of the career ladder whose performance, on the most recent appraisal, was evaluated as exceeding expectations or clearly outstanding. The performance of a teacher who, because of unusual circumstances, is appraised only once in a particular year shall be evaluated for career ladder purposes on the basis of a single appraisal.

The committee amendment was read and was adopted viva voce vote.

Senator Parker offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **S.B. 82** by striking subsection (A) of Section 8.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 82 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 82** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed viva voce vote.

BIRTHDAY GREETINGS EXTENDED

Senator Blake announced that today was Mrs. Pat Rodgers' birthday.

Mrs. Rodgers, the Assistant Senate Calendar Clerk, received birthday greetings from the Senate.

SENATE BILL 63 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 63, Relating to educational loans guaranteed by the Texas Guaranteed Student Loan Corporation.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 63 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 63 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Leedom, Lyon, Montford, Sims.

SENATE BILL 70 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business and the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 70, Relating to the division and disposition of marital property and to spousal liability.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 70**, Section 1, Sec. 3.633, page 4, line 24, by inserting the following:

(e) This section does not apply to the disposition of beneficial interest in a retirement benefit or other financial plan of a public retirement system as established by Section 12.001, Title 110B, Revised Statutes.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 2

Amend **S.B. 70**, Section 7 of the act by substituting the word "November" for the word "September."

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 70 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 70** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed viva voce vote.

SENATE RULE 74a SUSPENDED

On motion of Senator Sarpalius and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendments to S.J.R. 5.

SENATE JOINT RESOLUTION 5 WITH HOUSE AMENDMENTS

Senator Sarpalius called S.J.R. 5 from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate.

Floor Amendment No. 1 - Staniswalis/Smithee

Amend S.J.R. 5 by striking all below the resolving clause and substituting the following:

SECTION 1. Article IX, Section 5, of the Texas Constitution is amended by adding Subsections (e) and (f) to read as follows:

(e) The legislature by law may authorize Randall County to render financial assistance to the Amarillo Hospital District by paying part of the district's operating and maintenance expenses and the debts assumed or created by the district and to levy a tax for that purpose in an amount not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100.00) valuation on all property in Randall County that is not within the boundaries of the City of Amarillo or the South Randall County Hospital District. This tax is in addition to any other tax authorized by this constitution. If the tax is authorized by the legislature and approved by the voters of the area to be taxed, the Amarillo Hospital District shall, by resolution, assume the responsibilities, obligations, and liabilities of Randall County in accordance with Subsection (a) of this section and, except as provided by this subsection, Randall County may not levy taxes or issue bonds for hospital purposes or for providing hospital care for needy inhabitants of the county. Not later than the end of the first tax year during which taxes are levied under this subsection, Randall County shall deposit in the state treasury to the credit of the state general revenue fund \$45,000 to reimburse the state for the cost of publishing the resolution required by this subsection.

(f) Notwithstanding the provisions of Article IX of this constitution, if a hospital district was created or authorized under a constitutional provision that includes a description of the district's boundaries or jurisdiction, the legislature by law may authorize the district to change its boundaries or jurisdiction. The change must be approved by a majority of the qualified voters of the district voting at an election called and held for that purpose.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the legislature to permit the Amarillo Hospital District to serve certain residents of Randall County, to authorize Randall County to provide financial assistance to the district, and to authorize certain hospital districts to change their boundaries or jurisdiction with voter approval."

Floor Amendment No. 2 - Schlueter

Amend S.J.R. 5 by adding a new section appropriately numbered to read as follows:

SECTION 3. Section 2 of H.J.R. 2, 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 1988 [~~November 3, 1987~~]. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment establishing an economic stabilization fund in the state treasury to be used to offset unforeseen shortfalls in revenue."

The amendments were read.

Senator Sarpalius moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.J.R. 5 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Sarpalius, Chairman; Edwards, Whitmire, Johnson and Armbrister.

SENATE RULE 103 SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider the following bill and resolution at 2:00 p.m. today:

S.B. 91

SENATE RULE 103 SUSPENDED

On motion of Senator Harris and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Economic Development might consider S.B. 88 at 2:00 p.m. today.

SENATE RULE 103 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider S.B. 100 upon noon recess today.

SENATE RULE 103 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider S.B. 97 upon noon recess today.

SENATE RULE 103 SUSPENDED

On motion of Senator Parmer and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider S.B. 102 upon noon recess today.

SENATE RULE 103 SUSPENDED

On motion of Senator McFarland and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Criminal Justice might consider the following bills upon noon recess today:

S.B. 96

S.B. 99

S.B. 43

S.B. 42

H.B. 80

SENATE RULE 103 SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Finance might consider the following bills at 2:00 p.m. today:

S.B. 80

S.B. 90

S.B. 92

S.B. 6

RECESS

On motion of Senator Brooks, the Senate at 12:25 p.m. took recess until 3:30 p.m. today.

AFTER RECESS

The Senate met at 3:30 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
July 17, 1987

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 111, Relating to continuing supervision of certain districts and authorities by the Texas Water Commission.

H.B. 95, Relating to the liability of a county tax assessor-collector for the loss of public funds.

H.B. 71, Relating to competitive bidding requirements for certain hospital districts.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Caperton submitted the following report for the Committee on Jurisprudence:

S.B. 97

By unanimous consent, Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

S.B. 95

S.B. 102

S.B. 93

C.S.S.B. 94

By unanimous consent, Senator McFarland submitted the following report for the Committee on Criminal Justice:

H.B. 80
C.S.S.B. 42

By unanimous consent, Senator Farabee submitted the following report for the Committee on State Affairs:

H.J.R. 5
S.B. 91

By unanimous consent, Senator Santiesteban submitted the following report for the Committee on Natural Resources:

S.B. 100

By unanimous consent, Senator Blake, Acting Chairman, submitted the following report for the Committee on Finance:

S.B. 80 (Amended)

By unanimous consent, Senator Brooks, Acting Chairman, submitted the following report for the Committee on Finance:

S.B. 90 (Amended)
C.S.S.B. 6

By unanimous consent, Senator Harris submitted the following report for the Committee on Economic Development:

S.B. 88 (Amended)

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 95, To Committee on Intergovernmental Relations.
H.B. 111, To Committee on Natural Resources.
H.B. 71, To Committee on Intergovernmental Relations.

SENATE BILL AND RESOLUTION ON FIRST READING

The following bill and resolution were introduced, read first time and referred to the Committee indicated:

S.C.R. 39 by Truan, Parker, Uribe, Zaffirini Education
Creating a joint select committee to study the establishment of a component or components of The University of Texas System and The Texas A&M University System in South Texas.

S.B. 103 by Blake State Affairs
Relating to the initial appointment of the criminal district attorney of Polk County.

SENATE BILL 102 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, all necessary rules including the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 102, Relating to the creation, administration, powers, duties, operation, and financing of the Muleshoe Area Hospital District; granting the power of eminent domain; providing for the issuance of bonds and the levy of taxes.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 102 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 102 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Lyon, Montford, Sims.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Leedom, Lyon, Montford, Sims.

SENATOR ANNOUNCED PRESENT

Senator Lyon who had previously been recorded as "Absent-excused" was announced "Present".

SENATE BILL 100 ON SECOND READING

Senator Sarpalius moved to suspend all necessary rules including the printing rule to take up for consideration at this time:

S.B. 100, Relating to the creation, duties, and powers of the Texas Agricultural Finance Authority and the development of and issuance of bonds for an agricultural financing program.

The motion prevailed by the following vote: Yeas 26, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Lyon, McFarland, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Johnson, Washington.

Absent-excused: Leedom, Montford, Sims.

The bill was read second time.

Senator Johnson offered the following amendment to the bill:

Amend **S.B. 100** by striking Section 58.012 and substituting in lieu thereof the following:

Sec. 58.012. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors composed of the commissioner of agriculture, the vice-chancellor for agriculture of The Texas A&M University System, the director of the Institute for International Agribusiness Studies at Prairie View A&M University, a member of the Texas Department of Commerce board of directors selected by the Texas Department of Commerce board of directors, and three members appointed by the governor with the advice and consent of the senate. The governor's appointees must be representatives of the agricultural finance industry.

(b) The members appointed by the governor serve staggered terms of six years.

(c) Any vacancy occurring on the board of directors shall be filled by the governor for the unexpired term.

(d) Before assuming responsibilities, each board member shall execute a surety bond in the amount of \$25,000, conditioned on the faithful performance of duties of a director, executed by a surety company authorized to transact business

in the state, approved by the attorney general and filed with the secretary of state. The cost of the bond shall be paid by the authority.

(e) A board member is not entitled to compensation for serving as a director but is entitled to reimbursement for actual and necessary expense incurred in performing the official duties of office.

The amendment was read.

Senator Sarpalius moved to table the amendment.

The motion was lost by the following vote: Yeas 10, Nays 15.

Yeas: Armbrister, Blake, Brown, Caperton, Farabee, Harris, Jones, Krier, McFarland, Sarpalius.

Nays: Anderson, Barrientos, Brooks, Edwards, Green, Henderson, Johnson, Lyon, Parker, Santiesteban, Tejada, Truan, Washington, Whitmire, Zaffirini.

Absent: Glasgow, Parmer, Uribe.

Absent-excused: Leedom, Montford, Sims.

Question recurring on the adoption of the amendment, the amendment was adopted viva voce vote.

On motion of Senator Sarpalius and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 100 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 100 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Green, Harris, Johnson, Jones, Krier, Lyon, McFarland, Parker, Santiesteban, Sarpalius, Tejada, Truan, Whitmire, Zaffirini.

Nays: Henderson, Washington.

Absent: Glasgow, Parmer, Uribe.

Absent-excused: Leedom, Montford, Sims.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 6 ON SECOND READING

On motion of Senator Jones and by unanimous consent, all necessary rules including the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 6, Making appropriations for and directing payment of certain miscellaneous claims and judgments out of funds designated herein; requiring approval of the claims in the manner specified in this Act before payment is made.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 6
ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.B. 6 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Montford, Sims.

The bill was read third time and was passed viva voce vote.

SENATE BILL 80 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, all necessary rules including the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 80, Relating to the appraisal of certain property for ad valorem taxation.

The bill was read second time.

Senator Brooks offered the following committee amendment to the bill:

Amend **S.B. 80** by adding to Section 23.20 Subsection (h) to read as follows:

(h) An action taken under this Section shall not preclude imposition of rollback taxes or additional taxes under Sections 23.46, 23.55, 23.76, 23.86, or 23.96, Tax Code.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SENATE BILL 80 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 80** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Montford, Sims.

The bill was read third time and was passed viva voce vote.

SENATE BILL 91 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, all necessary rules including the printing rule were suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 91, Relating to the definition of blood banks for purposes of testing, confidentiality of records, "Operation Look-Back" procedures, and liability.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 91 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 91** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent-excused: Leedom, Montford, Sims.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0.

Absent-excused: Leedom, Montford, Sims.

SENATE RULE 103 SUSPENDED

On motion of Senator Blake and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider **S.B. 103** upon adjournment today.

SENATE RULE 103 SUSPENDED

On motion of Senator Truan and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Education might consider **S.C.R. 39** upon adjournment today.

MEMORIAL RESOLUTION

H.C.R. 72 - (Glasgow): Memorial resolution for Mrs. Eula Brock Seawright.

CONGRATULATORY RESOLUTIONS

H.C.R. 68 - (Caperton): Expressing appreciation to individuals and organizations regarding the reinterment of Texas Confederate veterans who fought at the Battle of Glorieta Pass.

S.R. 100 - By Zaffirini: Extending congratulations to Dora and Santiago Martinez on the occasion of their 25th wedding anniversary.

S.R. 101 - By Lyon: Commending the members of the Forney Area Antique Dealers Association.

S.R. 102 - By Tejeda: Extending congratulations to CWA Local 6143 on the occasion of its mortgage-burning.

S.R. 103 - By Tejeda: Extending congratulations to Charles and Margaret Nesrsta on the occasion of their 50th wedding anniversary.

S.R. 104 - By Barrientos: Extending birthday greetings to Grady Leroy Smith.

S.R. 105 - By Brooks: Extending congratulations to Jeanne Mixon and John Schwartz on their birth of their daughter, Elizabeth Alison Schwartz.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 4:29 p.m. adjourned until 2:00 p.m. tomorrow.

APPENDIX

Signed by Governor
(July 15, 1987)

S.C.R. 4

SENT TO GOVERNOR

(July 17, 1987)

S.C.R. 17

S.B. 18